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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,225	06/26/2003	Gary L. Koteskey	11074/009	5907

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT PAPER NUMBER

3635

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/607,225	Applicant(s) KOTESKEY, GARY L.	
	Examiner Chapman E Jeanette	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-10, 12-14, ~~15~~ and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 12-14, ~~15~~ and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-7, 9-10,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hume (5608998) in view of Bradley et al (6773206) and Janssen et al (4310372) and further in view of Jones (6357194).. Hume discloses a molded plastic segment 10 for use in a subterranean structure of the type comprising a cylindrical body made up of at least one tier of segments (figure 6). Alternatively, Hume discloses subterranean structure having a cylindrical body about a vertical axis made up at least one ring and each ring consist essentially of a plurality of horizontally adjacent segments 10 of molded plastic, each segment comprising:

- A wall segment 10 cylindrically curved about a vertical axis having an inside and outside surface, vertical side edges and horizontal top edges and bottom edges; see figures 1-2 and 6;
- First of vertical side edges 18 including a protruding mating element not vertically tapered;
- A second vertical side edge including a slot 16/14 that is not vertically tapered ;

- The vertically side edges including confronting surfaces adapted to be brought into abutting relationship between adjacent segments of similar construction (figure 4) but the adjacent segments are not in an interlocking engagement .
- The segment comprises a flange 22 protruding vertically from one of the horizontal edges to overlap a portion of the inside and outside surfaces of a vertically adjacent segment; see figure 5;
- A plurality of ribs/dimples 12 on the outside surface;
- A cover 50 contacting the horizontal top edge of the uppermost rings; see figure 6
- Gas seal means for securing the cover to the upper most rings

However, Hume discloses various interlocking fasteners for the horizontal attachment of segments 10. see figures 3 and 5. It would have been obvious to employ and interlocking fastener for the vertical side edges in order to provide a stronger means of attachment avoiding inadvertent detachment of the vertical edges. The interlocking fasteners are not of the dovetail (tapered) type. Such a choice is not viewed as critical to the overall function of the device; one of ordinary skill in the art would have appreciated the types of interlocking fasteners capable in aiding to fulfill the overall and intended function and purpose of the segment. Nevertheless Bradley et al discloses a molded segment with vertical side segments with interlocking fasteners. The vertical side edges include See figure 8. It would have been obvious to employ and interlocking

fastener for the vertical side edges in order to provide a stronger means of attachment avoiding inadvertent detachment of the vertical edges as shown by Bradley et al.

For the method claims:

With the above modification of interlocking mating parts, it is clear that the mating elements will be joined by sliding the protruding element into the slot of a ring of segments; it is clear this step is repeated with rings as shown in figure 6. In order to insert the protrusion into the slot it is clear that the ring has to be warped to insert the bottom edge of the protrusion into the top edge of the slot or vice versa joining the top edge of the protrusion to the bottom edge of the slot. Further, Hume teaches stacking one ring upon another of similar structure so that the protruding flange overlaps a portion of one of the inside and outside surfaces of another ring. Hume discloses adding as many rings as needed to form the proper and desired height structure. If one can add to provide the desired and needed height it is obvious that rings can be subtracted if too many rings are added before the adhesive is added. A bonding agent of adhesive is added; the same is compatible with the polymers forming the segments.

Jones discloses a wall element with vertical side edges and horizontal top and bottom edges, a first vertical side edges including a protruding mating element that is vertically tapered and a second vertical side edges including a slot that is vertically tapered the vertical side edges including confronting surface adapted to be brought into abutting relationship by interaction of the vertically tapered protruding mating element and a slot in any interlocking engagement between adjacent segments of similar

construction. It would have been obvious to employ the dovetail type fastener in order to provide a strong and secure attachment means to the structure.

Hume is silent as to the type size of the segments such that the vertical side edges being separated from each other by 120 degrees measured about the vertical axis. Janssen et al discloses a subterranean article having a plurality of segments/ sections 18a-c forming 120 degree segments of the circular device. It would have been obvious to employ the interfitting pieces of Janssen in Hume in order to draw the sections/segments together during assembly and ensure roundness of the fitting.

Claims, 8, 23-24 rejected under 35 U.S.C. 103(a) as being unpatentable over the above references and further in view of Benner (5930972) et al . The dovetail type mating fastener commonly employed in the building industry as shown by Jones above. Benner even includes the additional fastening means of protuberances and slots on the mating segments. See elements 46 and 42. It would have been obvious to one of ordinary skill in the art to employ any type of suitable fastening means capable of aiding in the intended use of the structure. It would have been obvious to employ the dovetail type fastener with mating elements on its part such as a protrusion and slot in order to provide a strong and secure attachment means to the structure.

Claims 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hume (5608998) in view of Bradley et al (6773206) and Janssen et al (4310372) in view

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of Dargie (5265974) and Torngren (3826032). Janssen and Hume discloses a plurality of dimples on a surface of each element or segment capable of providing a location for drilled holes used to mount additional hardware. Hume lacks the additional hardware being netting. Dargie discloses a safety net mounted in a dimpled surface. The safety net includes a plurality of strands. Torngren discloses a net with radial strands and crossing strands coupled to the former. Both include the strands being fixed sufficiently close to each other to prohibit/inhibit accidental entry into the subterranean structure by small animals and children but capable of providing entry to a hose and the like. Dargie includes a plurality of fasteners 14,23,35 coupled to the strands for connecting the same to the mounting hardware 20 on the inside surface of the subterranean structure. It would have been obvious to further modify Hume by including this net mounted as recited in order to include the safety feature in an urban environment.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hume (5608998) in view of Bradley et al (6773206) and Janssen et al (4310372) in view of Dargie (5265974) and Torngren (3826032) and further in view of Benner (5930972) et al and Jones (6357194). See above for how Jones and Benner references are applied to the base reference. Dargie discloses a safety net mounted in a dimpled surface adjacent 20. The safety net includes a plurality of strands. Torngren discloses a net with radial strands and crossing strands coupled to the former. Both include the strands being fixed sufficiently close to each other to prohibit/inhibit accidental entry into the subterranean structure by small animals and children but capable of providing entry to a hose and the like. Dargie includes a plurality of fasteners 14,23,35 coupled to the

strands for connecting the same to the mounting hardware 20 on the inside surface of the subterranean structure. It would have been obvious to further modify Dargie to include radial strands when the manhole is either circular or square to adapt netting to the fit in whatever shape opening.

Response to Arguments

Applicant's arguments filed 11/7/2005 have been fully considered but they are not persuasive. Dovetail fasteners having tapered protruding elements and tapered slot are common in the art of fasteners and connectors. And they are common in the building industry. The inherent nature of their design is that the to pull confronting surfaces of laterally adjacent panels together as the tapered elements increasingly become engaged. Incorporating them on any one structural element does not significantly change their function.

The base reference of Hume discloses a variety of releasable securing means. The variety suggest options may be employed. One possible option is a stronger releasable securing means such as that presented by Bradley and Jones. Contrary to applicant's opinion, Hume does not teach away from having a special shape on both ends of the panel and the present application does not recite a special shape on the ends of the panel. Contrary to applicant's opinion placing dovetail fasteners on any structural building element is not new. The function that inherently follows is also not new. The teaching of Bradley is not being bodily incorporated into Hume, but merely

used to show that molded tubular jackets with vertical side edges may use releasable and interlocking fastener. Jones specifically discloses those of the dovetail type.

Equally true, the entire teaching and disclosure of Janssen has not been bodily incorporated into Hume but cited to show a subterranean article having a plurality of segments and/or section forming 120 degree segments of a circular device. The motivation for imparting this teaching to Hume is to draw the section together during assembly and ensure roundness of the fitting.

Benner is cited for his teaching of the additional fastener on a dovetail fastener to provide a stronger attachment between mating parts. Dargie and Torngren were cited to show that nets as safety devices and guards prevent unwanted entry in a subterranean article by small animals and children.

In response to applicant's argument that the secondary references do not specifically teach the entire claimed invention, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

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references themselves or in the knowledge generally available to one of ordinary skill in the art. In the instant case, most of the knowledge came from general knowledge in the art. See motivation statements above.

In response to applicant's argument that the secondary references do not teach the entire claimed invention is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the secondary references concern themselves with the subterranean art or with releasable securing means on the subterranean articles or building structure articles.

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)


JEANETTE E. CHAPMAN
PRIMARY PATENT EXAMINER
ART UNIT 3635
